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Nos. 05-7058, 05-7142

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IN THE

Supreme Court of the United States

LORENZO L. JONES,

Petitioner,

v.

BARBARA BOCK, Warden, *et al.*,

Respondents.

TIMOTHY WILLIAMS,

Petitioner,

v.

WILLIAM OVERTON, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE STATES OF NEW YORK, ALABAMA, ALASKA, ARKANSAS, CALIFORNIA, COLORADO, DELAWARE, FLORIDA, HAWAII, IDAHO, ILLINOIS, MARYLAND, MISSOURI, MONTANA, NEBRASKA, NEVADA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, COMMONWEALTH OF PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, COMMONWEALTH OF VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, WYOMING, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF THE RESPONDENTS

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STATEMENT OF INTEREST OF AMICI CURIAE

The Prison Litigation Reform Act of 1995 provides that "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." Prison Litigation Reform Act of 1995 ("PLRA"), Pub. L. No. 104-134, § 803(d), 110 Stat. 1321-66, 1321-71 (1996), codified at 42 U.S.C. § 1997e(a). This provision replaced an earlier one under which administrative exhaustion "was in large part discretionary," *Porter v. Nussle*, 534 U.S. 516, 523 (2002), and which permitted a district court to stay a prisoner's action while administrative remedies were exhausted. Pursuant to § 1997e(a)'s "invigorated" exhaustion requirement, all available administrative remedies must now be exhausted before a prisoner can commence a federal action. *Id.* at 524. Among the issues presented in these appeals is whether the PLRA prescribes a "total exhaustion" rule, such that an action must be dismissed if the prisoner has not exhausted administrative remedies on all claims asserted in the complaint.

The *amici* States and their correctional officials are inundated with thousands of prisoner lawsuits annually. From 2000 through 2005, prisoner civil rights and prison conditions cases comprised between 8.3% and 9.8% of new filings in federal district courts, "or on average about one new prisoner case every other week for each of the nearly 1000 active and senior district judges across the country." *Woodford v. Ngo*, 126 S. Ct. 2378, 2388 n.4 (2006).

Correct resolution of this case will diminish the burdens imposed by this litigation in two ways. First, interpreting § 1997e(a) as imposing a total exhaustion requirement will maximize the incentive for prisoners to make prompt and

full use of prison grievance procedures and exhaust administrative remedies on all of their claims before joining them in an action. Prisoner grievances play an important role in prison administration by providing timely feedback to prison officials about problems that arise in correctional facilities. In individual cases, grievance procedures enable prison administrators to take prompt remedial action that may satisfy the prisoner and obviate the need for litigation. Such procedures also allow prison officials to monitor trends in prisoner complaints before unwise institutional policies or patterns of inappropriate conduct by correctional officers lead to frustration among inmates, potentially triggering prisoner unrest. Grievance procedures also allow state officials to filter out meritless claims and to create factual records of disputes that may eventually be litigated. By strongly encouraging prisoners to grieve all of their claims internally before commencing an action, the total exhaustion rule will further all these interests.

Second, a total exhaustion rule will help achieve the PLRA's important aim of increasing the quality of prisoner complaints, thereby decreasing the burden of prisoner litigation on the judiciary as well as on state correctional officials and their attorneys. Prisoners often file inartfully drafted complaints that include a number of claims, related and unrelated, spanning multiple dates and against multiple parties. If the total exhaustion rule imposed by § 1997e(a) is not applied, nothing deters prisoners from indiscriminately loading complaints with unexhausted as well as exhausted claims, leaving it to the district court, with the help of the defendants, to sort them out. Proper application of the total exhaustion rule will strongly discourage prisoners from including unexhausted claims in a complaint, promoting judicial economy and conserving the limited resources that the *amici* States expend in defending against these suits in the manner Congress intended.

SUMMARY OF ARGUMENT

Section 1997e(a) of the PLRA mandates that "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." The plain language of this provision prohibits the commencement of an "action" with respect to prison conditions unless there has been total exhaustion of available administrative remedies on *all* claims. The general rule is that an action barred from commencement by the terms of a statute must be dismissed. Section 1997e provides for no exception to this general rule. Thus, § 1997e(a) prescribes a "total exhaustion" requirement, such that a district court must dismiss without prejudice a prisoner's action where administrative remedies have not been exhausted on all claims.

This rule markedly furthers the PLRA's goals of decreasing the quantity and increasing the quality of prisoner complaints. It maximizes the incentive for prisoners to grieve all of their claims promptly before joining them in an action, giving correction officials the earliest opportunity to resolve all of the prisoner's complaints. Thus, corrective action on meritorious claims may eliminate litigation altogether, while frivolous claims may be weeded out. Prompt and complete exhaustion of all claims also facilitates the creation of a more complete administrative record to assist the courts in resolving those claims that are ultimately litigated.

A "total exhaustion" rule also strongly discourages the indiscriminate pleading of unexhausted claims. As a result, courts and defendants are spared the time-consuming effort of ferreting out the unexhausted claims in often inartfully

drafted complaints, attention that can be better devoted to resolving exhausted claims in properly pleaded complaints. The rule may also reduce piecemeal litigation by encouraging prisoners to exhaust all claims and include them in one action with only one filing fee.

ARGUMENT

I. The Plain Language Of 42 U.S.C. § 1997e(a) Requires Total Exhaustion Of Administrative Remedies Before An "Action" May Be "Brought."

The language of § 1997e(a) is plain and it is mandatory. It provides that "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." By using the mandatory word "shall" and the term "action" instead of "claim," and barring an action where all available administrative "remedies" — in the plural — have not been exhausted, Congress clearly expressed its intent that a prisoner must exhaust administrative remedies on all claims before commencing a suit in federal court. *See Woodford*, 126 S. Ct. at 2391 ("saying that a party may not sue in federal court *until* the party first *pursues* all available avenues of administrative review necessarily means that, if the party never pursues all available avenues of administrative review, the person will never be able to sue in federal court") (emphasis in the original). This construction is confirmed by § 1997e(c), which distinguishes between an "action" and a "claim," indicating that Congress intended the two terms to be construed differently in accordance with their usual definitions. *See* Fed. R. Civ. P. 3 ("A civil action is commenced by filing a complaint with the court."); Fed. R. Civ. P. 18(a) (party may join in a pleading "as many claims" as the party has against an opposing party); Black's Law Dictionary, at 26 (5th ed. 1979) (term action "in its usual legal sense means a suit brought in a court"); *id.* at 224 (defining "claim" as "[c]ause of action");

see also Artuz v. Bennett, 531 U.S. 4, 9-10 (2000) (relying on different meanings of terms "application" and "claim").[1]

Petitioners' rejoinder to the plain text is simply that § 1997e(a) does not direct a district court to dismiss a non-compliant action. *See* Br. 65; *see also Ortiz v. McBride*, 380 F.3d 649, 657 (2d Cir. 2004), *cert. denied*, 543 U.S. 1187 (2005); *Lira v. Herrara*, 427 F.3d 1164, 1171 (9th Cir. 2005). But no such instruction from Congress was required. This Court has instructed that "[a]s a general rule, if an action is barred by the terms of a statute, it must be dismissed." *Hallstrom v. Tillamook County*, 493 U.S. 20, 31 (1989); *accord McNeil v. United States*, 508 U.S. 106, 111, 113 (1993) ("The command that an 'action shall not be instituted . . .' is unambiguous" and "[b]ecause petitioner failed to heed that clear statutory command, the District Court properly dismissed his suit."). The logic underlying this general rule is simple: Congress does not intend that an action it prohibits from being brought at all can continue in any fashion. This rule should have even greater force in the context of a statute designed to decrease the quantity and increase the quality of prisoner lawsuits. Particularly because this Court "generally 'presumes that Congress expects its statutes to be read in conformity with the Court's precedents,'" *Porter*, 534 U.S. at 528 (*quoting United States v. Wells*, 519 U.S. 482, 495

1. Even the Second and Ninth Circuits, which have rejected the total exhaustion rule, concede that the literal terms of § 1997e(a) bar the commencement of an action with a "mixed" complaint alleging both exhausted and unexhausted claims. *See Ortiz v. McBride*, 380 F.3d 649, 657 (2d Cir. 2004) ("Section 1997e(a) clearly instructs that an action . . . containing exhausted and unexhausted claims should not have been 'brought'"), *cert. denied*, 543 U.S. 1187 (2005); *Lira v. Herrara*, 427 F.3d 1164, 1170-71 (9th Cir. 2005) ("The text of § 1997e(a) specifies a rule regarding the *instigation* of suit — that 'no action shall be brought' unless there has been exhaustion" and "[t]hat requirement necessarily applies to all claims alleged") (emphasis in the original).

(1997)), it was wholly unnecessary for Congress to have included in § 1997e(a) an explicit mandate that mixed actions be dismissed.

In any event, dismissal for noncompliance with § 1997e(a) is comfortably included within § 1997e(c)'s dismissal provisions. Section 1997e(c)(1) requires dismissal of "frivolous" actions. It provides that

> [t]he court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions ... if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

42 U.S.C. § 1997e(c)(1). Because a mixed action is barred from commencement by § 1997e(a), a mixed action is legally frivolous within the meaning of § 1997e(c)(1). *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (defining "frivolous" as lacking "an arguable basis either in law or in fact"). In addition, if a statute bars commencement of an action, that action necessarily does not state any claim upon which relief can be granted by the court.

What § 1997e(c)'s dismissal provisions nowhere authorize is the procedure sanctioned by the Second and Ninth Circuits, permitting a district court to dismiss without prejudice the unexhausted claims in an improperly commenced mixed action. Section 1997e(c)(2), addressing dismissal of claims, provides that

> [i]n the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a

> defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

42 U.S.C. § 1997e(c)(2). This provision authorizes dismissal of facially meritless claims with prejudice, "thus allowing a district court to dismiss plainly meritless claims without first addressing what may be a much more complex question, namely, whether the prisoner did in fact properly exhaust available administrative remedies." *Woodford*, 126 S. Ct. at 2392.[2] Section 1997e(c)(2) does not, however, authorize a court to prune potentially meritorious unexhausted claims from the complaint and dismiss them without prejudice, permitting the exhausted claims to go forward.

Contrary to petitioners' suggestion (Br. 68), the total exhaustion rule does not render § 1997e(c)(2) superfluous. As this Court noted in *Woodford*, § 1997e(c)(2) "serves a useful function by making it clear that the PLRA exhaustion requirement is not jurisdictional." 126 S. Ct. at 2392. Moreover, it is simply not true that "'[t]here would be little point in providing for the dismissal of some nonexhausted claims on the merits [under § 1997e(c)(2)] if the remainder of the action would then have to be dismissed, although exhausted, because of the failure to exhaust the dismissed

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2. While this provision could result in the survival of an action even though a dismissed frivolous claim might also have been shown to have been unexhausted, Congress chose not to require unnecessary expenditure of judicial resources where facial dismissal was the most efficient course of action. Thus, for example, a prisoner's claim that his rights were violated by being served creamy peanut butter instead of the chunky variety can be dismissed as frivolous without determining whether it was exhausted.

claims'" (Pet. Br. 68) (*quoting Lira*, 427 F.3d at 1172). A dismissal for lack of total exhaustion required by § 1997e(a) will, as a general rule, be without prejudice. The prisoner may attempt to commence a new action asserting both the previously-exhausted claims and any unexhausted claims that have been exhausted in the interim. Pursuant to § 1997e(c)(2), the court may, however, dismiss a particular claim with prejudice without first inquiring whether the claim was exhausted. The dismissal of that claim will be subject to *res judicata*, barring the prisoner from ever returning to court with the claim. Thus, § 1997e(c)(2) is not superfluous; it complements § 1997e(a)'s total exhaustion rule by permitting the court to dismiss a patently meritless claim on the merits, never to be resurrected, regardless of exhaustion.

Petitioners also argue (Br. 68) that if the term "action" as used in § 1997e(a) is interpreted to demand dismissal of a mixed complaint, then § 1997e(c)(1), which uses the same term, would also require dismissal of the entire complaint if any claim is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from an immune defendant, thus rendering § 1997e(c)(2) superfluous. This argument misreads § 1997e(c)(1), which mandates dismissal of the action if the court "is satisfied that the action" is frivolous, malicious, fails to state a claim upon which relief can be granted or seeks damages from an immune defendant. Thus, with respect to the underlying merits of the claims asserted, the provision requires dismissal of the action only if *all* claims fail on these grounds. With respect to exhaustion, § 1997e(a) likewise refers to an "action" as a bundle of claims in a lawsuit and bars an action until all available administrative remedies have been

exhausted. If this statutory precondition to commencement is not satisfied, dismissal of the action is required.[3]

A further question is whether § 1997e(a) requires that a mixed action be dismissed without an opportunity for the prisoner to amend the complaint. Petitioners note (Br. 76) that in the habeas corpus context, where a total exhaustion rule applies, petitioners are permitted to resubmit a petition with the unexhausted claims deleted. *See Rose v. Lundy*, 455 U.S. 509, 520-22 (1982) (plurality opinion) ("a district court must dismiss habeas petitions containing both unexhausted and exhausted claims," but the prisoner can "amend the petition to delete the unexhausted claims"); *see also Rhines v. Weber*, 544 U.S. 269, 278 (2005). If the district court finds good cause for the petitioner's failure to exhaust all claims, the court may, under limited circumstances, employ a "stay-and-abeyance" procedure, staying the habeas proceeding and holding it in abeyance while the petitioner returns to state court to exhaust his unexhausted claims. *Rhines*, 544 U.S. at 277.

This analogy, however, is inapt in light of § 1997e(a)'s text and legislative history. Section 1997e(a) was substituted for a predecessor provision that authorized district courts to stay the prisoner's action "for a period not to exceed 180

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3. Petitioners' reference to § 1997e(e) does not assist them either. The instant cases do not present the question whether an action must be dismissed because a prisoner pleads a claim "for mental or emotional injury suffered while in custody without a prior showing of physical injury," 42 U.S.C. § 1997e(e), despite the pleading of other viable claims. In any event, § 1997e(e)'s heading indicates that it is a "[l]imitation on recovery" that does not implicate the same underlying policy concerns as the total exhaustion requirement of § 1997e(a) (*see* Point II, *infra*).

days" while the prisoner exhausted administrative remedies. Civil Rights of Institutionalized Persons Act, § 7, 94 Stat. 352; *see Woodford*, 126 S. Ct. at 2382; *Porter*, 534 U.S. at 523. Thus, any argument that a stay for this purpose continues to be available is untenable.

Moreover, Congress included a different prohibition in § 1997e(a) than it did in 28 U.S.C. § 2254. Section 2254 does not explicitly bar the commencement of a habeas corpus proceeding with a mixed petition. It provides that "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court *shall not be granted* unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A) (emphasis added); *see Rhines*, 544 U.S. at 273 ("we held in *Rose v. Lundy* . . . that federal district courts may not *adjudicate* mixed petitions for habeas corpus") (emphasis added). The habeas statute thus leaves room for an amendment of the petition or stay-and-abeyance so that the application is adjudicated only on exhausted claims.

In § 1997e(a), however, Congress used language that unambiguously precludes the commencement of an action with a mixed complaint. There is no reason that Congress would have barred commencement of a mixed action if it had intended that, once commenced, the infirmity simply could be cured by the prisoner or the court. Accordingly, this text should be given legal effect, and dismissal of a statutorily-barred action is thus the proper disposition.

II. A Total Exhaustion Rule Furthers The Policies Underlying The PLRA And § 1997e(a).

While the plain language of § 1997e(a) should be dispositive, the policies underlying the PLRA's enactment likewise weigh heavily in favor of a total exhaustion requirement. This Court has stressed "the PLRA's dominant concern to promote administrative redress, filter out groundless claims, and foster better prepared litigation of claims aired in court." *Porter*, 534 U.S. at 528. "Beyond doubt, Congress enacted § 1997e(a) to reduce the quantity and improve the quality of prisoner suits; to this purpose, Congress afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." *Id.* at 524-25.

A total exhaustion rule serves all of these goals. It promotes administrative redress by maximizing the incentive for prisoners to make prompt and full use of prison grievance procedures and exhaust administrative remedies on all claims before joining them in an action, giving prison officials an earlier opportunity to resolve all of the prisoner's complaints. *See Woodford*, 126 S. Ct. at 2387-88 (adopting construction of § 1997e(a) that "gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors"); *cf. Duncan v. Walker*, 533 U.S. 167, 178-80 (2001) (adopting construction of habeas corpus statute that provides a "powerful incentive" to exhaust available remedies and rejecting interpretation that "would do far less to encourage exhaustion"). The rule thus promotes federal-state comity, which "has as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked." *Preiser v. Rodriguez*, 411 U.S. 475, 491

(1973); *see Woodford*, 126 S. Ct. at 2388 ("This is particularly important in relation to state corrections systems because it is 'difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.'") (*quoting Preiser*, 411 U.S. at 491-92).

As a result of this incentive, the total exhaustion rule will inevitably reduce the quantity and improve the quality of prisoner suits. In many cases, corrective action taken by prison officials on a prisoner's grievance that would otherwise remain unexhausted "might improve prison administration and satisfy the inmate," *Porter*, 534 U.S. at 525, so that the claim is never brought to federal court. Alternatively, administrative resolution of the claim may convince the prisoner of its lack of merit so that it does not become part of future litigation. *See id.* ("In other instances, the internal review might 'filter out some frivolous claims.'") (*quoting Booth v. Churner*, 532 U.S. 731, 737 (2001)). When a prisoner has multiple claims that are all properly grieved, favorable resolution of one or more of them may persuade the prisoner to abandon the others and not to commence a federal action at all. *See Woodford*, 126 S. Ct. at 2388 ("Proper exhaustion reduces the quantity of prisoner suits because some prisoners are successful in the administrative process, and others are persuaded by the proceedings not to file an action in federal court."). The prompt and complete exhaustion encouraged by the rule also facilitates the creation of a more accurate and complete administrative record to assist the courts in resolving claims ultimately litigated. *See id.* ("proper exhaustion often results in the creation of an administrative record that is helpful to the court" and "[w]hen a grievance is filed shortly after the event giving rise to the

grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved").

Additionally, the total exhaustion rule improves the quality of prisoner suits by strongly discouraging the inclusion of unexhausted claims in a complaint. *See Porter*, 534 U.S. at 528 (dominant concern of PLRA to, *inter alia*, "foster better prepared litigation of claims aired in court"). Without the rule, district courts and defendants are left to ferret out the unexhausted claims through time-consuming motion practice. Permitting district courts simply to dismiss unexhausted claims results in a toothless scheme in which the prisoner's noncompliance with § 1997e(a) carries no sanction at all, providing no deterrence to the pleading of unexhausted claims. *See Woodford*, 126 S. Ct. at 2388 (declining to adopt interpretation of § 1997e(a) that "carries no significant sanction" for noncompliance).

While petitioners note that the prisoner may just file another action with only the exhausted claims, the prisoner will be assessed another filing fee, *see* 28 U.S.C. § 1915(b)(1), providing a financial disincentive to including the unexhausted claims in the first action. Statutes of limitations may provide an added incentive for prisoners not to allege unexhausted claims and have an action dismissed on this basis.[4] Thus, the total exhaustion rule will

4. The statute of limitations for section 1983 claims "is generally the applicable state-law period for personal-injury torts," *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 123 n.5 (2005), and state tolling provisions may permit a prisoner to recommence an action on exhausted claims dismissed for lack of total exhaustion, notwithstanding that the statute of limitations has run in the interim. *See, e.g.*, N.Y. C.P.L.R. 205(a).

meaningfully improve the quality of prisoner complaints, as Congress intended, by forcing a prisoner to think twice before pleading unexhausted claims. *See Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 398 (1990) ("The filing of complaints, papers, or other motions without taking the necessary care in their preparation is a separate abuse of the judicial system"). The time that district courts and defendants would spend culling unexhausted claims from mixed complaints can be better spent on resolving exhausted claims in properly pleaded, potentially meritorious complaints.

The total exhaustion rule promotes judicial economy in other ways as well. Because an action must be dismissed once the court identifies one unexhausted claim, the court and defendants are spared the time-consuming effort of determining whether every other claim in the complaint has been exhausted. In addition, the rule may serve to discourage piecemeal litigation, an especially important objective when claims are factually or legally related. Knowing that a mixed action will be dismissed, the prisoner is strongly encouraged to exhaust all claims initially and include them in one action with only one filing fee to be paid. *See Rose*, 455 U.S. at 520 ("Rather than increasing the burden on federal courts, strict enforcement of the exhaustion requirement will encourage habeas petitioners to exhaust all of their claims in state court and to present the federal court with a single habeas petition."). By mandating that "[n]o action shall be brought" until all administrative remedies have been exhausted, Congress intended to avoid the inefficiency that would result if a prisoner can litigate the exhausted claims in a mixed complaint and then bring related claims if and when they have been exhausted. *See id.* ("To the extent that the exhaustion requirement reduces piecemeal litigation, both the courts and the prisoners should benefit, for as a result

the district court will be more likely to review all of the prisoner's claims in a single proceeding, thus providing for a more focused and thorough review."). Thus, "[t]he interest in orderly administration of this body of litigation is best served by adherence to the straightforward statutory command." *McNeil*, 508 U.S. at 112.

Finally, petitioners' view that the total exhaustion rule is too harsh for prisoners was rejected by Congress when it enacted § 1997e(a). The total exhaustion rule provides "a simple and clear instruction to potential litigants," *Rose*, 455 U.S. at 520: before you commence an action in federal court, make sure that you have administratively exhausted all of your claims in the prison system. Even *pro se* prisoners should "be able to master this straightforward exhaustion requirement," *id.*, that they are already acquainted with from the habeas corpus context. *See Woodford*, 126 S. Ct. at 2393 (rejecting argument that requiring proper exhaustion is unduly harsh for prisoners, in light of the "informality and relative simplicity of prison grievance systems" and "the fact that prisoners who litigate in federal court generally proceed *pro se* and are forced to comply with numerous unforgiving deadlines and other procedural requirements").[5]

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5. Notably, *pro se* prisoner complaint forms provided by district courts to prisoners place them on notice of this requirement by directing the prisoner to allege the manner in which he grieved each claim and the result. *See, e.g.*, United States District Court for the Western District of New York Prisoner Complaint Form, *at* http://www.nywd.uscourts.gov/document/PrisonerComplaintForm.pdf; United States District Court for the Northern District of New York Inmate Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, *at* http://www.nynd.uscourts.gov/pdf/inmatciv.pdf.

CONCLUSION

For the foregoing reasons, this Court should hold that the PLRA prescribes a total exhaustion rule that requires a district court to dismiss a prisoner's action when the complaint contains any unexhausted claims.

Respectfully submitted,

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